IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 506 of 2003 (S/B)
(Old Number 1602 of 2000)

Mahavir Prasad
Aged about 49 years
S/o Shri Doodh Nath
R/o E-3565, Rajajipuram ……..Petitioner

Versus

1. **U.P. Sate Public Services Tribunal**
   Indira Bhawan, Lucknow
2. **The State of U.P. through Secretary**
   to the Government Department of Home, Police,
   U.P. Lucknow. & Others ……Opposite Party

Date of decision: February, 2005

For the approval of:

Hon'ble Mr. Chief Justice V.S. Sirpurkar

Hon'ble Mr. Justice Prafulla C. Pant

- Whether the order/judgment should be sent to the reporters for reporting? (yes)

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Reserved

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1. U.P. State Public Services Tribunal
   Indira Bhawan, Lucknow.
2. The State of U.P. through Secretary
   to the Government Department of
   Home, Police, U.P. Lucknow.
3. Senior Superintendent of Police
   Nainital, District: Nainital
4. Deputy Inspector General of Police
   Range Nainital, District: Nainital

…….Opposite partly

Shri R.C. Saxena, Learned Counsel for the petitioner.
Learned Standing Counsel for the opposite party.

Corum: Hon'ble V.S. Sirpurkar, C.J.
Hon'ble Prafulla C. Pant, J.

Per Hon'ble Prafulla C. Pant, J.

By means of this writ petition, moved under Article 226 of Constitution of India, the petitioner, a dismissed Constable of Police, has sought certiorari quashing the judgment and order dated 06.07.2000 passed by the U.P.

State Public Service Tribunal, Lucknow, whereby his claim petition has been dismissed.

2. Brief facts of the case are that the petitioner was appointed as Constable on 26.07.1969 in U.P. Armed Police. He was sent on deputation to U.P. Vigilance Department on 05.10.1977. In the year 1985 a Crime No. 343 of 1985 under Section 409/420/471 I.P.C. was registered against the petitioner. Again, another Crime No. 1079/85 under section 409/420/471 I.P.C. was registered by lodging the First Information Report with the Police Station, Hazratganj, Lucknow. Consequently, the petitioner surrendered and was sent to jail on 24.08.1985, where from he was released on bail on 21.09.1985. Meanwhile vide order dated 23.08.1985, the petitioner was relieved from the Vigilance cell and directed to join his duties at Nainital. Since the petitioner failed to join his duties at Nainital, he was placed under suspension vide order dated 04.10.1985. It is alleged that the petitioner was paid subsistence allowance only after requests and pursuance to the department. It is further alleged in the writ petition that since the petitioner had to face the criminal trial at Lucknow, he requested that he should be permitted to remain at Lucknow. The petitioner was then permitted to stay at Lucknow vide order dated 09.09.1986 during the period of his suspension. It appears that the suspension order dated 04.10.1985 was revoked by order dated 17.05.1991 while the criminal cases were still pending against the petitioner. The petitioner thereafter vide several letters dated 17.06.1991, 25.05.1992, 08.02.1993 and 15.03.1993 was asked to report to his duty

at Nainital but to no avail. And he continued to make one after other representations for his transfer from Nainital to Lucknow, without joining his duties at Nainital. Ultimately, the petitioner was issued a charge sheet dated 25.05.1993 for unauthorized absence from duty and the enquiry was conducted under Section 7 of the Police Act. The petitioner has alleged that though he was given certain copies of the documents along with the charge sheet but not the preliminary enquiry report. The petitioner appears to have submitted his reply to the charge sheet on 12.08.1993 but thereafter did not turn up to attend the enquiry even on being asked to be present. In para-27 to the writ petition, the petitioner has stated that he wanted traveling allowance in advance for attending the enquiry at Nainital. On the basis of this, petitioner's case is that he was not given proper opportunity of being heard or defended by the department. Complaining the violation of the principles of natural justice, he has challenged the departmental enquiry. The petitioner did submit his representation dated 14.12.1994 in reply to the Show Cause Notice dated 15.12.1994 before the impugned order of dismissal from service passed against him. A departmental appeal was preferred by the petitioner thereafter before the respondent no. 4 which was rejected by him on 02.02.1995. Finally, Claim Petition No. 461 of 1996 was moved by the petitioner before State Public Service Tribunal, Lucknow, challenging the order of dismissal from service. After hearing the parties, the Tribunal also dismissed the petition on 06.07.2000, hence this Writ Petition.

3. We heard Learned Counsel for the parties and perused the record.

4. The first submission made on behalf of the petitioner is that since the petitioner was facing the criminal trials at Lucknow as such it was not possible for him to join his duties at Nainital. In this connection, our attention was drawn to Annexure-8 to the writ petition, which is a copy of letter dated 27.05.1992, wherein Senior Superintendent of Police, Nainital has requested the Police Headquarters to attach the petitioner as desired by him, somewhere near Lucknow. However, on close scrutiny, we found that simultaneously it is also mentioned in the letter, while endorsing its copy to the petitioner that until he joins his duties at Nainital, it is not possible to take any further action in the matter. As such we are of the view that the aforesaid letter is of little assistance to the case of the petitioner. Once the order of suspension was revoked, it was the duty of the petitioner to join his work at the place of his posting, which he admittedly failed to do. From the above document, it appears that the department was very much sympathetic to the petitioner and probably could have transferred him back somewhere near Lucknow but the petitioner himself created a condition by not joining his duties at Nainital, which the department could not help.

5. Shri R.C. Saxena, learned Counsel for the petitioner, drew our attention to Rule 59 –A of Financial Handbook, Volume-III, which provides that a delinquent official if posted at a place other than the place of enquiry, he shall be entitled to Travelling Allowance for attending the enquiry except in the cases where he himself has got enquiry

transferred to some other place. On the basis of said Rule, it is submitted on behalf of the petitioner that since he was not paid any Traveling Allowance as such it cannot be said that he did not cooperate in the enquiry by not attending the same. After going through the said Rule, we have examined the matter from that angle also and we see no force in the contention of the petitioner. The said rule 59-A does not provide to send advance payment of traveling allowance to the delinquent official. What the petitioner should have done is that he could have attended the enquiry and there after a Travelling Allowance Bill should have been submitted to the concerned department. But the record shows that even after being given several opportunities, the petitioner never attended the enquiry and was rightly held guilty of the charge of unauthorized absence by the Enquiry Officer. There is one more reason for not accepting the contention of the petitioner. And the reason flows from the Rule 59-A of Financial Hand Book, Volume-III, itself which reads as under:-

"Rule 59-A: *A government servant under suspension who is required to perform a journey to attend the departmental enquiry (other than police enquiry) may be allowed traveling allowance as for a journey on tour from his headquarters to the place where the departmental enquiry is held, or from the place at which he has been permitted to reside during suspension to the place of enquiry, whichever is less. No traveling allowance will, however be admissible if the enquiry is held at the outstation at his own request."*

Plain reading of the above Rule makes it clear that the Rule does not apply to the police enquiry. In para-21 of the writ

petition, the petitioner himself admits that the enquiry in question was under Section 7 of the Police Act. Assuming for a moment it is not a police enquiry, even then since the enquiry was conducted not a place other than the place of the posting of the petitioner i.e. Nainital, he was not entitled to any traveling allowance for attending the enquiry. For the same reason, the principle of Law contained in State of U.P. Vs. Rishi Pal Singh, L.C.D., 1994 (12) Pg. 367, a Single Judge judgment which is referred before us, in our opinion, does not help the petitioner. In the circumstances, we do not find any violation of principle of natural justice in the impugned departmental enquiry.

6. Much reliance was placed on behalf of the petitioner on Annexure-5 to the writ petition, which is a copy of the order dated 09.09.1986, passed by the Senior Superintendent of Police, Nainital, permitting the petitioner to stay at Lucknow. It is contended that the petitioner practically stands posted at Lucknow and not at Nainital. We have gone through said order and examined it, which reads as follows:

आदेष

कान्सटेबिल 312 स0 पु0 महावीर प्रसार (निलंबित) को उसके प्रार्थना पत्र दिनांक 29.08.1986 के सन्दर्भ में ऐतदद्वारा निम्नालिखित जामिनान के संरक्षण में रहने की अनुमति इस प्रतिबन्ध के साथ प्रदान की जाती है कि वह जामिनान के पास से अन्यत्र कहीं जाने आने की सूचना यथासमय इस कार्यालय को देता रहेगा।

क्र0 सं0	*अभियोग का वितरण*	*नाम पता जामिनान*
1	*मु0 अ0स0 843/85 धारा 409/420/171 भा0 द0 वि0 ब्याना हजरत गंज जिला*	*1. श्री गोविन्दहरी गुप्ता पुत्र श्री के0पी0 गुप्ता निवासी ई0 3571 राजाजीपुरम् लखनऊ*

	लखनऊ	2. श्री प्रलाद पुत्र श्री लक्षमण निवासी ई0 5319 राजा जी पुरम लखनऊ
2	मु0 अ0स0 1079/85 धारा 409/420/477 A मा0 द0 वि0 थाना हजरतगंज जिला लखनऊ	1. श्री अषोक कुमार पुत्र श्री भगवान दीन, निवासी ई0 3376 राजाजी पुरम लखनऊ 2. श्री राजेन्द्र प्रसाद पुत्र डी0डी0 एन राम, निवासी ई0 3565 राजाजी पुरम, लखनऊ

ह0

संख्या : व– 319/85 ज्येष्ठ पुलिस अधीक्षक
दिनांक सितम्बर 9, 1986 नैनीताल

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवष्यक कार्यवाही हेतु

1. प्रतिसार निरीक्षक को हिन्दी आदेष पुस्तिका में अंकित करने हेतु
2. प्रधानलिपिक चरित्र पंजिका लिपिक
3. आंकिक को – इस आषय से प्रेषित की जाती है कि वे कृपया उक्त निम्न – आरक्षी को दिनांक 04.10.1985 से रुके हुए जीवन निर्वाह भत्ते का भुगतान तथा अन्य देयकों का भुगतान अविलम्ब सुनिष्चित करें
4. कान्सटेबिल 312 स0 पु0 महावीर प्रसाद (निलम्बित) निवासी ई–3565 राजाजी पुरम लचानऊ को उसके प्रार्थना पत्र दिनांक 29.08.1986 के सन्दर्भ में सुचनार्थ प्रेषित है।''

The above mentioned letter makes very clear that it is meant only for the period of suspension of the petitioner and does not permit the petitioner not to join his duties at Nainital on revocation of the suspension order.

7. One more argument advanced on behalf of the petitioner is that his representation was not considered before the impugned order of dismissal from service, passed by the department. From the perusal of the impugned order (copy Annexure-2), it is clear that after the delinquent official was found guilty, the petitioner was

given an opportunity vide letter dated 15.11.1994, to submit his reply within a period of eight days by presenting himself in person before the Senior Superintendent of Police at Nainital, before the punishment is awarded.

It is also mentioned in the impugned order that by special messenger, said letter dated 15.11.1994 was served on the petitioner. But he preferred not to go to submit his reply to the authority concerned. It appears that the department waited for almost one month after service of the said notice to the petitioner before impugned order was passed. The submission of the learned counsel for the petitioner is that he did send a reply dated 14.12.1994 by registered post which is alleged to have reached the office on 22.12.1994 and was not considered. Firstly, the petitioner himself is at fault by not making said representation within the time allowed and by not presenting himself before the Authority concerned. Secondly, if the representation by post reaches after the impugned order was passed, it cannot be said that the concerned Authority was bound to consider the said representation. Otherwise also even on consideration of the representation of the petitioner, the fate of the case would not have been different for the reason that he has conducted himself in such a manner by not reporting to duty for several years with lame excuses that the department could not have passed the order except the one passed. Also, this Court cannot ignore the fact that admittedly the petitioner is still facing two serious charges of offence punishable under Section 409 of Indian Penal Code in the courts. In that background of fact, misconduct of the unauthorized absence for several years by a member of

disciplined force makes us feel that it does not warrant any interferenee with the impugned order of the State Public Service Tribunal, Lucknow which dismissed the claim of the petitioner for detailed reasons mentioned in the impugned order.

8. Before parting with the judgment, we feel it necessary to add that the learned Tribunal, while dismissing the claim petition, has considered and discussed at length all the points raised by the petitioner. It has been categorically found by the Tribunal that though the petitioner has alleged that he was not given copy of preliminary enquiry report but the same was found to have been sent to him vide letter No. PF – 14/93 Dt. 29.07.1993 by registered post. It is further mentioned in the impugned judgment that not only the petitioner was given necessary documents with chargesheet but also the notices inviting him to cross examine the witnesses and finally the Show Cause Notice before the punishment was awarded to him, as such the petitioner was given sufficient reasonable opportunity of being heard as required under service jurisprudence. We are in full agreement with the reasons and findings of the learned Public Services Tribunal that there had been no violation of any of the provisions of Article 14, 21 of 311 (2) of the Constitution of India in this matter.

9. Therefore, we are of the view that the writ petition is devoid of merits and liable to be dismissed. The writ petition is dismissed. No order as to costs.

(Prafulla C. Pant, J.) **(V.S. Sirpurkar, C.J.)**

Dt. February 15, 2005

Sweeta